

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
(  
( Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. Claim: That the service rights of Bonafide Carmen, Herman Perry, E. F. Lockard and Frankel Beach and existing rules of agreement, Rules 27, 29 and "Guidelines To Be Followed With Respect To Bonafide Carmen Who Are Furloughed At One Point And Desire to Displace Tentative Carmen At Other Seniority Points On The Chesapeake District Of The Chesapeake and Ohio Railway Company", dated December 11, 1970 were violated account not being permitted to displace tentative carmen working at Huntington Shops and Yards.
2. Accordingly, Perry, Lockard and Beach are each entitled to be placed on the bonafide Carmen's seniority roster at Huntington Shops and Yards with a date of June 2, 1982 and also each are entitled to be compensated eight (8) hours each day, five (5) days each week at Carmen's applicable straight time rate until such time that they are restored to service at Huntington, West Virginia.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The three employees who are Claimants in this dispute were employed as "bona fide" carmen at the Carrier's Raceland, Kentucky location when, in May, 1982, they were furloughed. The three were among a large group of carmen from Raceland who attempted to displace junior "tentative" carmen at the Carrier's Huntington, West Virginia location in June, 1982, according to the provisions of the guidelines referred to above. The Claimants were interviewed by Carrier officers, during which the Claimants allegedly disclosed that they could not make terminal air tests and that they had no transportation yard experience. The Organization does not dispute that the individual Claimants made these disclosures to the Carrier. The Carrier's representatives

determined from these admissions that the Claimants were not qualified for the carmen positions at Huntington, and therefore refused to allow them to displace the tentative carmen employed there.

The Organization argues that the Claimants' admissions should not have disqualified them for these positions, and that therefore the Carrier has violated the Collective Bargaining Agreement by refusing to allow them to displace tentative carmen at Huntington. Although the claims state that Rules 27 and 29 of the agreement were also violated, in its submission the Organization relies solely upon language contained in a 1970 Memorandum Agreement which contains guidelines governing cases in which bona fide carmen who are furloughed at one point may displace tentative carmen at another location. The relevant language in these guidelines provides:

- "1. Bona fide carmen furloughed at Point "A" ... would be permitted to displace tentative-carman at other seniority points ... provided it was considered by the local supervision at the point at which they desired to displace that the bona fide carmen were qualified to perform Carrier's service requirements as they existed at the point at which they desired to displace a tentative-carman. Where there was question as to the qualifications of an individual employe the individual would be given not to exceed a three day trial period to determine whether the employe was or was not qualified. ... If the employe was not qualified displacement would not be permitted." (Emphasis added)

In the instant case the Carrier did not allow the Claimants a trial period, but simply determined from the initial interview that they were not qualified for the job.

The precise nature of these guidelines is not clear from the parties' submissions, and the Carrier suggests that they do not carry much weight, because they are merely "guidelines". The Carrier does not expressly argue that the guidelines are not binding, however, or that they are not part of the Collective Bargaining Agreement. Therefore the Board will consider them as rules which the parties must observe.

The guidelines provide a trial period to determine an employe's qualifications when there is a question as to those qualifications. The Carrier contends that the trial period applies only when there is doubt about the qualifications of the employe, and that there was no doubt in this case. The Organization suggests, however, that at least one of the qualifications under review, i.e. experience in the transportation yard, was not essential to many of the carmen positions, since only a few carmen positions were in the transportation yard.

The issue thus evolves around the question of who determines whether a trial period is available. The assumption underlying the Carrier's position is that only the Carrier may decide whether there is doubt concerning an employe's qualifications. If the Carrier were given sole authority to decide this issue, however, then there would be no need for this language in the agreement. The Carrier could simply offer a trial period if, in its own best interests, it decided one was beneficial. The fact that the language is

included in the Agreement at all demonstrates that the parties intended it to provide some protection to the employee whose qualifications are in doubt. If the Board were to accept the Carrier's interpretation, then the Carrier could circumvent this protection simply by stating that there is no doubt about the employee's qualifications. The Board does not believe the parties intended this result.

The Carrier has asserted that the Claimants were not qualified for the positions they sought, and has cited many opinions by this Board upholding the general principle that the Board must defer to the Carrier's decisions regarding employee qualifications. Under these general principles the Carrier need not prove that the employee in question was unqualified for the job when the Organization raises the question through a claim or other grievance procedure; it is up to the Organization to prove that the employee was qualified. However, none of the cases cited by the Carrier involves the sort of limiting language present in this Agreement. Here the Organization need only prove that the employee's qualifications are in doubt. Because the Carrier never responded to the Organization's assertion that the skills or experience lacked by the Claimants were not essential to the job, the Board concludes that there was sufficient doubt about the Claimant's qualifications to necessitate a trial period.

The Carrier should have afforded the Claimants in this case a trial period; however, because this Board has no injunctive powers we cannot order the Carrier to offer a trial period to the Claimants at this time. The Organization demands that the Claimants be placed on the seniority roster for bona fide carmen at Huntington, beginning June 2, 1982 and that they be compensated at the straight-time rate until they are restored to service at Huntington. This remedy presumes, however, that the Claimants would have qualified for the jobs. The Board has found only that there was doubt as to their qualifications, and they should have been offered a trial period. Therefore, the Board will order the Carrier to pay the Claimants for the maximum length of the initial trial period, i.e. three days.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1986.

